THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 20462 of 2004

06-09-2005

Between:

1 M/s. Russell's Institute of Spoken English Pvt. Ltd. rep by its Managing Director Mr. M.A. Zaheer, S/o. Mir Hassan Ali,aged 48 years, R/o. 10-3-5/D, Mehdipatnam Cross Roads, Hyderabad. And others.

..... PETITIONERS

AND

1 Government of Andhra Pradesh, rep by its Principal Secretary, Home Department, Secretariat, Hyderabad. And othes.

.....RESPONDENTS

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 20462 of 2004

O R D E R:

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On the requisition given by the Inspector General of Police, Gray Hounds, Hyderabad, to acquire 10.10 guntas of land at Manchirevula village, for the purpose of security and safety to the Grey Hounds training campus, a draft notification was issued in G.O.Rt.No.255 dated 23-2-2004 and was published in the A.P.Gazettee extraordinary on 08-03-2004 expressing the intention of the Government to acquire the aforesaid Ac.10.10 gts. in S.No. 362/4, 373/4, 370/4 belonging to 3 individuals including the petitioner,

dispensing with enquiry under Section 5-A of the Land Acquisition Act (for short 'the 'Act') by virtue of powers vested in Governor by Section 17(4) of the Act. Petitioners claiming to be the owners of Ac.1.00 of land in S.No.362/4 of Manchirevula village which is a part of item No.1 of the land proposed to be acquired, have filed this petition questioning the said notification.

The main contention of the learned counsel for the petitioners is that since the notification impugned, issued by the government does not show that it applied its mind to come to the conclusion that there was a real urgency for dispensation of the enquiry under Section 5A of the Act and since there is no real urgency, as such, in view of the ratio in **Union of India Vs. Mukesh Hans()** the impugned notification is liable to the quashed.

The contention of the learned Assistant Government Pleader is that since the land is required for establishment of a firing range which has to be cardoned of, for reasons of safety and to prevent trespass, and since the training imparted to the Gray Hounds should not be witnessed by others, there is real and absolute urgency for acquisition of the above said land and contends that mere inexpression of urgency is not fatal as it can be gathered from the circumstances and relied on the observations in **Union of India Vs. Kishanlal Arneja ()** in support of his contention and contended that there are no grounds to quash the proceedings at the instance of the petitioners since none of the other owners of the land proposed to be acquired questioned the proposed acquisition.

In reply to the contention of the learned counsel for the petitioner that since the Government which issued the notification has to justify its decision to dispense with the enquiry under Section 5A of the Act, and since the counter affidavit of the Land Acquisition Officer i.e. 2nd respondent only, but not that of any of the officials in the Home Department i.e. 1st respondent, is filed in this case, it should be taken that the Government failed to establish the real urgency to dispense with the enquiry under Section 5A of the Act.

On my direction, the learned Assistant Government Pleader produced the relevant file . I have gone through the same.

The file produced by the learned Assistant Government Pleader shows that in pursuance of a letter addressed from the Inspector General of Police, Grey Hounds, the Joint Collector addressed a letter to the Secretary to the Government, Home Police (B) Department, in March, 2003 endorsing relevant material, with a request to approve the notifications under Section 4(1) and 6 of the Act under urgency clause for acquisition of the land in question and to communicate the orders passed, for taking further action. Thereupon Government called for the remarks of the Director General and Inspector General of Police, who sent his remarks through his letter dated 17-07-2003 and thereafter the matter was placed before the screening committee, which considers the proposals for land acquisition of various departments. The screening committee accepted the proposal for acquisition of Ac.20.20 gts. for the Police Department subject to the condition of its depositing the entire amount of compensation payable, before the Land Acquisition Officer, even before the publication of draft notification and declaration in the papers. Consequently, Deputy Secretary to the Government in the Home PS (E) Department informed the Collector, Ranga Reddy District, through G.O.Rt.No.255 dated 23-02-2004, that subject to the condition of the police department depositing the entire amount of compensation payable before Land Acquisition Officer, before publication of the draft declaration and notification, Government accepts the view that the acquisition is urgent and so the provisions of 5A of the Act shall not apply to the case. The file does not show that either the screening committee or the head of the department i.e. the Principal Secretary to the Government or the concerned Minister, had applied their mind to the question whether there is real urgency to dispense with the enquiry under Section 5A of the Act or not. Except the official letter of the Deputy Secretary to the Government addressed to the Collector, Ranga Reddy District, referred to above, there is nothing on record to show that the

Governor i.e. Government, had considered and accepted the view that there is real urgency for acquisition and so the enquiry under Section 5A of the Act has to be dispensed with.

In paras 31 and 32 of Mukesh Hans case (supra 1) relied on by the learned counsel for the petitioners the apex Court held :

> 31. Section 17(4) as noticed above, provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-section (1) or (2) of section 17, it may direct that the provisions of Section 5-A shall not apply and if such direction is given then Section 5-A inquiry can be dispensed with and a declaration may be made under Section6 on publication of Section 4(1) notification and possession can be made.
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> 32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not ;mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or that it could require the appropriate Government on that very basis to dispense with the inquiry

under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act."

In that case, the learned Judges, after referring to Nandeshwar Prasad V. State of U.P. (), held that there should be an application of mind to the facts of the case with special reference to the inquiry under Section 5A of the Act, because the right given to a owner or person interested in the land proposed to be acquired is very limited, and yet is a substantive right, which can be taken away only for good and valid reason, and within the limitations prescribed in Section 17(4) of the Act. For reaching the said conclusion their Lordships also took into consideration the observations in para 7 of Munshi Singh V. Union of India () reading:

"Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made…. The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A"

and specifically held that when the Government decides to take away the minimal right, of an owner or occupier of the land, it must be based on the material on record.

Even in Kishanlal Arneja's case (supra 2) relied on by the learned Assistant Government Pleader, the Apex Court laid down the object behind the enquiry under Section 5A of the Act and held as follows in para 16 of its Judgment.

16. Section 17 confers extraordinary powers on the authorities under

which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowners of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. **Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous.** A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

(Emphasis supplied)

The above observations clearly show how important an inquiry under Section 5A of the Act is, to the owner or occupier of a land proposed to be acquired.

In this Case, though the proposals for acquisition were received from the Inspector General of Grey Hounds was in 2003 the decision to acquire the said land was taken only in 2004. It is well known that the maximum period within which an enquiry under Section 5A of the Act is to be completed is 30 days. There is nothing on record to show

that the purpose of acquisition would be defeated if the land is not taken possession of immediately or the purpose for which the land is to be acquired would not brook delay of 30 days.

Apart from the above reasons, as rightly contended by the learned counsel for the petitioners, counter affidavit of any responsible officer in the Home Department is not filed to show on what basis the Government took a decision to dispense with the enquiry under Section 5A of the Ac by virtue of the power conferred by Section 17 of the Act. Second respondent who filed the counter affidavit on behalf of the respondents does not, and cannot also have, the knowledge relating to the reasons that prompted the Government to dispense with the enquiry under Section 5A of the Act. Therefore, prima-facie it has to be taken that the Government has no reasons to explain as to why it came to the conclusion that enquiry under Section 5A of the Act has to be dispensed with, and so I hold that dispensation of enquiry, for acquiring the land of the petitioner, is improper.

For the above reasons that part of the notification impugned dispensing with the enquiry under Section 5A of the Act only, is quashed and 2nd respondent (LAO) is directed to hold an enquiry under Section 5A of the Act by giving an opportunity to the petitioner to show cause why its land should not be acquired and complete the enquiry within one month from the date of receipt of the copy of this order and take further steps as per the provisions of the Act. No order as to costs.

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06-09-2005

Mjl/*